

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

BMC SOFTWARE, INC.,

Plaintiff,

v.

SERVICENOW, INC.,

Defendant.

CIVIL ACTION NO. 2:14-CV-903-JRG

JURY TRIAL DEMANDED

**AMENDED DOCKET CONTROL ORDER**

Before the Court is the Joint Motion to Amend the Docket Control Order (Dkt. 341).

Having considered the Motion to Amend the Docket Control Order the Court Orders that the Joint Motion is Granted and the current Docket Control Order (Dkt. No. 303) be amended as follows:

Current Date	New Date	
March 14, 2016	Unchanged	*Jury Selection - 9:00 a.m. in <b>Marshall, Texas</b> before Judge Rodney Gilstrap
February 8, 2016	February 16, 2016	*File Joint Proposed Jury Instructions and Joint Proposed Verdict Form

(\*) Indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

**ADDITIONAL REQUIREMENTS**

**Notice of Mediator:** The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

**Summary Judgment Motions:** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief in each of those matters shall be no longer than five (5) pages and shall be filed with the Court no later than the deadline for filing letter briefs. Answering letter briefs in each of those matters shall be no longer than five (5) pages and filed with the Court no later than fourteen (14) days thereafter. Reply briefs in each of those matters shall be no longer than three (3) pages and filed with the Court no later than five (5) days thereafter. The Court may decide the question on the submissions or hold a hearing or telephone conference to hear arguments and to determine whether the filing of any motion will be permitted. Letter briefs shall be filed without exhibits. Any requests to submit letter briefs after the deadlines outlined above must show good cause.

**Indefiniteness:** In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.

**Motion for Continuance:** The following excuses will not warrant a continuance nor justify a failure to comply with a discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

**Amendments to the Docket Control Order (“DCO”):** Any motion to alter any date on the DCO shall take the form of motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

**So ORDERED and SIGNED this 8th day of February, 2016.**

  
RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE